

as treason, violation of public trust, subversion, or involving abnormal sex behavior, addiction to drugs or alcohol, and mental or physical handicaps; (5) the formulation of sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States.

(b) After the Judicial Conference has approved the time, place, participants, agenda, and other arrangements for such institutes and joint councils, the chief judge of each circuit is authorized to invite the attendance of district judges under conditions which he thinks proper and which will not unduly delay the work of the courts.

(c) The Attorney General is authorized to select and direct the attendance at such institutes and meetings of United States attorneys and other officials of the Department of Justice and may invite the participation of other interested Federal officers. He may also invite specialists in sentencing methods, criminologists, psychiatrists, penologists, and others to participate in the proceedings.

(d) The expenses of attendance of judges shall be paid from applicable appropriations for the judiciary of the United States. The expenses connected with the preparation of the plans and agenda for the conference and for the travel and other expenses incident to the attendance of officials and other participants invited by the Attorney General shall be paid from applicable appropriations of the Department of Justice.

(Added Pub. L. 85-752, §1, Aug. 25, 1958, 72 Stat. 845.)

#### SENTENCING PROCEDURES

Section 7 of Pub. L. 85-752 provided that: "This Act [enacting this section, sections 4208 and 4209 of Title 18, Crimes and Criminal Procedure, and provisions set out as a note under section 4208 of Title 18] does not apply to any offense for which there is provided a mandatory penalty."

### § 335. Judicial Conference of the Court of International Trade

(a) The chief judge of the Court of International Trade is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.

(b) The Court of International Trade shall provide by its rules for representation and active participation at such conference by members of the bar.

(Added Pub. L. 99-466, §2(a), Oct. 14, 1986, 100 Stat. 1190.)

#### EFFECTIVE DATE

Section effective 60 days after Oct. 14, 1986, see section 4 of Pub. L. 99-466, set out as an Effective Date of 1986 Amendment note under section 331 of this title.

## CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

Sec.

371. Retirement on salary; retirement in senior status.

- 372. Retirement for disability; substitute judge on failure to retire; judicial discipline.
- 373. Judges in Territories and Possessions.<sup>1</sup>
- 374. Residence of retired judges; official station.
- 375. Recall of certain judges and magistrates.
- 376. Annuities for survivors of certain judicial officials of the United States.
- 377. Retirement of bankruptcy judges and magistrates.

#### AMENDMENTS

1988—Pub. L. 100-702, title X, §1020(a)(9), Nov. 19, 1988, 102 Stat. 4672, substituted "Annuities for survivors of certain judicial officials of the United States" for "Annuities to widows and surviving dependent children of justices and judges of the United States" in item 376.

Pub. L. 100-659, §2(b), Nov. 15, 1988, 102 Stat. 3916, added item 377.

1986—Pub. L. 99-651, title II, §201(b)(2), Nov. 14, 1986, 100 Stat. 3648, amended item 375 generally.

1984—Pub. L. 98-353, title II, §204(b), July 10, 1984, 98 Stat. 350, substituted "Retirement on salary; retirement in senior status" for "Resignation or retirement for age" in item 371.

1980—Pub. L. 96-458, §3(c), Oct. 15, 1980, 94 Stat. 2040, inserted reference to "judicial discipline" in item 372.

1972—Pub. L. 92-397, §3(a), (b), Aug. 22, 1972, 86 Stat. 579, substituted "JUSTICES AND JUDGES" for "JUDGES" in chapter heading, and substituted "justices and judges of the United States" for "judges" in item 376.

1959—Pub. L. 86-312, §2, Sept. 21, 1959, 73 Stat. 587, inserted "official station" in item 374.

1956—Act Aug. 3, 1956, ch. 944, §1(a), 70 Stat. 1021, substituted "Annuities to widows of justices" for "Annuities to widows on the Chief Justice and Associate Justices of the Supreme Court of the United States" in item 375 and added item 376.

1954—Act Aug. 28, 1954, ch. 1053, §2, 68 Stat. 918, added item 375.

Act Feb. 10, 1954, ch. 6, §4(b), 68 Stat. 13, transferred "substitute judge on failure to retire" from item 371 to item 372.

#### CROSS REFERENCES

Tax Court Judges, retirement, see section 7447 of Title 26, Internal Revenue Code.

### § 371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)(1) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (f).

(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (f), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in ac-

<sup>1</sup> Section catchline amended by Pub. L. 99-396 without corresponding amendment of analysis.

tive service or, if a certification under subsection (f) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65 .....	15
66 .....	14
67 .....	13
68 .....	12
69 .....	11
70 .....	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e) Notwithstanding subsection (c) of section 5532 of title 5, if a regular or reserve member or former member of a uniformed service who is receiving retired or retainer pay becomes employed as a justice or judge of the United States, as defined by section 451, or becomes eligible therefor while so employed, such retired or retainer pay shall not be paid during regular active service as a justice or judge, but shall be resumed or commenced without reduction upon retirement from the judicial office or from regular active service (into senior status) as such justice or judge.

(f)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

(C) The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

(June 25, 1948, ch. 646, 62 Stat. 903; Oct. 31, 1951, ch. 655, § 39, 65 Stat. 724; Feb. 10, 1954, ch. 6, § 4(a), 68 Stat. 12; Pub. L. 98-353, title II, § 204(a), July 10, 1984, 98 Stat. 350; Pub. L. 100-702, title X, § 1005(a), Nov. 19, 1988, 102 Stat. 4666; Pub. L. 101-194, title VII, § 705(a), Nov. 30, 1989, 103 Stat.

1770; Pub. L. 104-317, title III, §301, Oct. 19, 1996, 110 Stat. 3851.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§375 and 375a (Mar. 3, 1911, ch. 231, §260, 36 Stat. 1161; Feb. 25, 1919, ch. 29, §6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422; Mar. 1, 1937, ch. 21, §§1, 2, 50 Stat. 24; Feb. 11, 1938, ch. 25, §1, 52 Stat. 28; May 11, 1944, ch. 192, §1, 58 Stat. 218).

This section consolidates provisions of sections 375 and 375a of title 28, U.S.C., 1940 ed., relating to resignation and retirement. Remaining provisions of said section 375 now appear in sections 136, 294, and 756 of this title, and remaining provisions of said section 375a now appear in section 294 of this title.

Words “may resign, or may retain his office but retire from regular active service” were used to clarify the difference between resignation and retirement. Resignation results in loss of the judge’s office, while retirement does not. (*Booth v. U.S.*, 1933, 54 S. Ct. 379, 291 U.S. 339, 78 L. Ed. 836; *U.S. v. Moore*, 1939, 101 F. 2d 56, certiorari denied 59 S. Ct. 788, 306 U.S. 664, 83 L. Ed. 1060.)

Terms “judge of the United States” and “justice of the United States” are defined in section 451 of this title.

The revised section continues the provision respecting the salary of a resigned judge but changes such provision for retired judges and makes them eligible to receive any increases provided by Congress for the office from which they retired. This change is in harmony with the clear line of distinction drawn by Congress between retirement and resignation.

#### AMENDMENTS

1996—Subsec. (f)(1)(D). Pub. L. 104-317, §301(b), inserted at end “In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.”

Subsec. (f)(3). Pub. L. 104-317, §301(a), substituted “may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.” for “is thereafter ineligible to receive such a certification.”

1989—Subsec. (b). Pub. L. 101-194, §705(a)(1), designated existing provisions as par. (1), inserted “or her” after “his”, substituted “of the office if he or she meets the requirements of subsection (f)” for “of the office”, and added par. (2).

Subsec. (f). Pub. L. 101-194, §705(a)(2), added subsec. (f).

1988—Subsec. (e). Pub. L. 100-702 added subsec. (e).

1984—Pub. L. 98-353 substituted “Retirement on salary; retirement in senior status” for “Resignation or retirement for age” in section catchline.

Subsec. (a). Pub. L. 98-353 amended subsec. (a) generally, substituting “may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired” for “who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned”.

Subsec. (b). Pub. L. 98-353 amended subsec. (b) generally, substituting “may retain the office but retire

from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office” for “may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years continuously or otherwise. He shall, during the remainder of his lifetime, continue to receive the salary of the office. The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires”.

Subsecs. (c), (d). Pub. L. 98-353 added subsecs. (c) and (d).

1954—Act Feb. 10, 1954, struck out “; substitute judge on failure to retire” in section catchline.

Subsec. (a). Act Feb. 10, 1954, reenacted subsec. (a) without change.

Subsec. (b). Act Feb. 10, 1954, in first sentence, inserted provision for retirement after attaining the age of 65 years and after serving 15 years continuously or otherwise.

Subsec. (c). Act Feb. 10, 1954, in general amendment of section, omitted subsec. (c) which related to appointment of substitute judges for disabled judges eligible to resign or retire where the latter fail to resign or retire, and to precedence of such disabled judges who remain on the active list after the appointment of substitutes.

1951—Act Oct. 31, 1951, subdivided section into subsections, and limited second par. of subsec. (c) (as so designated) to judges who remain on the active list but whose disabilities cause the appointment of additional judges as authorized by first par. of such subsec.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 705(b) of Pub. L. 101-194 provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall first apply with respect to work performed on or after January 1, 1990, by a justice or judge of the United States who has retired under section 371(b) of title 28, United States Code.

“(2) CALENDAR YEAR 1990.—In the case of certifications required by section 371(f) of title 28, United States Code, for calendar year 1990—

“(A) such certifications shall be based on the 10-month period beginning on January 1, 1990, and ending on October 31, 1990, and shall be completed not later than December 15, 1990;

“(B) determinations of work performed under section 371(f) of title 28, United States Code, shall be made pro rata on the basis of such 10-month period; and

“(C) such certifications shall be deemed to be certifications made in calendar year 1991.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1005(b) of Pub. L. 100-702 provided that: “The amendment made by this section [amending this section] shall apply to a justice or judge who retires, or has retired, from the judicial office or from regular active service (into senior status) as such justice or judge of the United States on or after the effective date of section 5532(c) of title 5 [effective 90 days after Oct. 13, 1978, see Effective Date of 1978 Amendment note under section 5532 of Title 5, Government Organization and Employees], and to whom section 5532(c) would otherwise be applicable.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 204(c) of Pub. L. 98-353 provided that: “The amendments made by this section [amending this section] shall apply with respect to any justice or judge of the United States appointed to hold office during good behavior who retires on or after the date of enactment of this Act [July 10, 1984].”

## COMPUTATION OF JUDICIAL SERVICE, DISTRICT OF ALASKA

Pub. L. 89-70, July 8, 1965, 79 Stat. 213, provided: "That, notwithstanding any other provision of law, any service as a judge of the District Court for the Territory of Alaska shall be included in computing under sections 371 and 372 of Title 28, United States Code, the aggregate years of judicial service of a United States district judge for the district of Alaska."

## JUDICIAL SERVICE IN HAWAII INCLUDED WITHIN COMPUTATION OF AGGREGATE YEARS OF JUDICIAL SERVICE

Pub. L. 86-3, §14(d), Mar. 18, 1959, 73 Stat. 10, provided in part: "That service as a judge of the District Court for the Territory of Hawaii or as a judge of the United States District Court for the District of Hawaii or as a justice of the Supreme Court of the Territory of Hawaii or as a judge of the circuit courts of the Territory of Hawaii shall be included in computing under section 371, 372, or 373 of title 28, United States Code, the aggregate years of judicial service of any person who is in office as a district judge for the District of Hawaii on the date of enactment of this Act [Mar. 18, 1959]."

## CROSS REFERENCES

Assignment of retired justices or judges to active duty, see section 294 of this title.

Justices and judges appointed to hold office during good behavior—

Court of International Trade, see section 252 of this title.

Courts of Appeals, see Const., Art. 3, §1.

District Courts, see Const., Art. 3, §1.

Supreme Court, see Const., Art. 3, §1.

Tax court judges, retirement, see section 7447 of Title 26, Internal Revenue Code.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 180, 294, 331, 372, 375, 376, 377, 458, 621 of this title; title 5 sections 8440a, 8701, 8714a, 8714b; title 26 section 3121; title 42 section 409.

**§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline**

(a) Any justice or judge of the United States appointed to hold office during good behavior who becomes permanently disabled from performing his duties may retire from regular active service, and the President shall, by and with the advice and consent of the Senate, appoint a successor.

Any justice or judge of the United States desiring to retire under this section shall certify to the President his disability in writing.

Whenever an associate justice of the Supreme Court, a chief judge of a circuit or the chief judge of the Court of International Trade, desires to retire under this section, he shall furnish to the President a certificate of disability signed by the Chief Justice of the United States.

A circuit or district judge, desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his circuit.

A judge of the Court of International Trade desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his court.

Each justice or judge retiring under this section after serving ten years continuously or otherwise shall, during the remainder of his lifetime, receive the salary of the office. A justice or judge retiring under this section who has

served less than ten years in all shall, during the remainder of his lifetime, receive one-half the salary of the office.

(b) Whenever any judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a certificate of his disability signed by a majority of the members of the Judicial Council of his circuit in the case of a circuit or district judge, or by the Chief Justice of the United States in the case of the Chief Judge of the Court of International Trade, or by the chief judge of his court in the case of a judge of the Court of International Trade, is presented to the President and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the circuit, district, or court.

(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may—

(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(B) conclude the proceeding if he finds that appropriate corrective action has been taken

or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council—

(A) may conduct any additional investigation which it considers to be necessary;

(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

(i) directing the chief judge of the district of the magistrate whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate;

(ii) certifying disability of a judge appointed to hold office during good behavior whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this section;

(iii) requesting that any such judge appointed to hold office during good behavior voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply;

(iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate whose conduct is the subject of a complaint;

(v) censuring or reprimanding such judge or magistrate by means of private communication;

(vi) censuring or reprimanding such judge or magistrate by means of public announcement; or

(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 152 of this title;

(C) may dismiss the complaint; and

(D) shall immediately provide written notice to the complainant and to such judge or magistrate of the action taken under this paragraph.

(7)(A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(B) In any case in which the judicial council determines, on the basis of a complaint and an investigation under this subsection, or on the basis of information otherwise available to the council, that a judge appointed to hold office during good behavior may have engaged in conduct—

(i) which might constitute one or more grounds for impeachment under article II of the Constitution; or

(ii) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate whose conduct is the subject of the action taken under this paragraph.

(8)(A) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

(9)(A) In conducting any investigation under this subsection, the judicial council, or a special committee appointed under paragraph (4) of this subsection, shall have full subpoena powers as provided in section 332(d) of this title.

(B) In conducting any investigation under this subsection, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331 of this title, shall have full subpoena powers as provided in that section.

(10) A complainant, judge, or magistrate aggrieved by a final order of the chief judge under paragraph (3) of this subsection may petition the judicial council for review thereof. A complainant, judge, or magistrate aggrieved by an action of the judicial council under paragraph (6) of this subsection may petition the Judicial Conference of the United States for review thereof. The Judicial Conference, or the standing committee established under section 331 of this title, may grant a petition filed by a complainant, judge, or magistrate under this paragraph. Except as expressly provided in this paragraph, all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(11) Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this subsection, including the processing of petitions for review, as each considers to be appropriate. Such rules shall contain provisions requiring that—

(A) adequate prior notice of any investigation be given in writing to the judge or magistrate whose conduct is the subject of the complaint;

(B) the judge or magistrate whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

(C) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any rule promulgated under this subsection shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this sub-

section may limit the period of time within which a person may file a complaint under this subsection.

(12) No judge or magistrate whose conduct is the subject of an investigation under this subsection shall serve upon a special committee appointed under paragraph (4) of this subsection, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331 of this title, until all related proceedings under this subsection have been finally terminated.

(13) No person shall be granted the right to intervene or to appear as *amicus curiae* in any proceeding before a judicial council or the Judicial Conference under this subsection.

(14) Except as provided in paragraph (8), all papers, documents, and records of proceedings related to investigations conducted under this subsection shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

(A) the judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate whose conduct is the subject of the complaint;

(B) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(C) such disclosure is authorized in writing by the judge or magistrate who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331 of this title.

(15) Each written order to implement any action under paragraph (6)(B) of this subsection, which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331 of this title, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order issued under this paragraph shall be accompanied by written reasons therefor.

(16) Upon the request of a judge or magistrate whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge or magistrate during the investigation which would not have been incurred but for the requirements of this subsection.

(17) Except as expressly provided in this subsection, nothing in this subsection shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal

Rules of Appellate Procedure, or the Federal Rules of Evidence.

(18) The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the foregoing provisions of this subsection, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this subsection.

(June 25, 1948, ch. 646, 62 Stat. 903; May 24, 1949, ch. 139, § 67, 63 Stat. 99; Feb. 10, 1954, ch. 6, § 4(a), 68 Stat. 12; Pub. L. 85–261, Sept. 2, 1957, 71 Stat. 586; Pub. L. 96–417, title V, § 501(9), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 96–458, § 3(a), (b), Oct. 15, 1980, 94 Stat. 2036, 2040; Pub. L. 97–164, title I, § 112, Apr. 2, 1982, 96 Stat. 29; Pub. L. 98–353, title I, § 107, July 10, 1984, 98 Stat. 342; Pub. L. 100–702, title IV, § 403(c), Nov. 19, 1988, 102 Stat. 4651; Pub. L. 101–650, title IV, § 402, Dec. 1, 1990, 104 Stat. 5122; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 375b, 375c, and 375d (Aug. 5, 1939, ch. 433, §§ 1–3, 53 Stat. 1204, 1205).

This section consolidates sections 375b, 375c, and 375d of title 28, U.S.C., 1940 ed.

Section 375e of title 28, U.S.C., 1940 ed. providing that term “senior circuit judge” includes the Chief Justice of the United States Court of Appeals for the District of Columbia, and the term “judicial circuit” includes the District of Columbia, was omitted from this revision as unnecessary. Such district is included as a judicial circuit by section 41 of this title.

Words “justice or judge of the United States” were used to describe members of all courts who hold office during good behavior. (See reviser’s note under section 371 of this title.)

Term “chief judge” was substituted for “Chief Justice” of the Court of Claims, “presiding judge” of the Court of Customs and Patent Appeals and “senior circuit judge.” (See Reviser’s Note under section 136 of this title.)

For clarity and convenience the requirement that certificates of disability be submitted “to the President,” was made explicit.

The revised section requires a judge of the Customs Court to furnish a certificate of disability signed by the chief judge of his court, instead of by the chief judge of the Court of Customs and Patent Appeals as in said section 375c of title 28, U.S.C., 1940 ed. This change insures signing of the certificate of disability by the chief judge possessing knowledge of the facts.

Changes were made in phraseology and arrangement.

##### 1949 ACT

Subsection (a) of this section amends section 372 of title 28, U.S.C., to express the requirement that appointment of successors to justices or judges must be made with confirmation by the Senate. Subsection (b) of this section clarifies the intent of section 372 of title 28, U.S.C., and conforms with the language of section 371 of such title.

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, and the Federal Rules of Evidence, referred to in subsec. (c)(17), are set out in the Appendix to this title.

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(17), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

#### AMENDMENTS

1992—Subsec. (c)(18). Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1990—Subsec. (c)(1). Pub. L. 101–650, § 402(a), inserted at end “In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.”

Subsec. (c)(3)(B). Pub. L. 101–650, § 402(f), inserted before period at end “or that action on the complaint is no longer necessary because of intervening events”.

Subsec. (c)(4). Pub. L. 101–650, § 402(b), inserted at end “A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.”

Subsec. (c)(6). Pub. L. 101–650, § 402(g), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(7)(B). Pub. L. 101–650, § 402(i)(1), substituted “may have engaged in conduct” for “has engaged in conduct” in introductory provisions and “article II” for “article I” in cl. (i).

Subsec. (c)(8). Pub. L. 101–650, § 402(d), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 101–650, § 402(c)(1), inserted at end “Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.”

Subsec. (c)(11). Pub. L. 101–650, § 402(e), inserted at end “No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.”

Subsec. (c)(14). Pub. L. 101–650, § 402(c)(2)(A), (B), substituted “Except as provided in paragraph (8), all” for “All” and “except to the extent that” for “unless” in introductory provisions.

Subsec. (c)(14)(A). Pub. L. 101–650, § 402(c)(2)(E), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (c)(14)(B). Pub. L. 101–650, § 402(c)(2)(D), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (C).

Pub. L. 101–650, § 402(c)(2)(C), inserted “such disclosure is” before “authorized”.

Subsec. (c)(14)(C). Pub. L. 101–650, § 402(c)(2)(D), (i)(2), redesignated subpar. (B) as (C) and substituted “subject of the complaint” for “subject to the complaint”.

Subsec. (c)(16) to (18). Pub. L. 101–650, § 402(h), added par. (16) and redesignated former pars. (16) and (17) as (17) and (18), respectively.

1988—Subsec. (c)(11). Pub. L. 100–702 inserted before last sentence “Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment.”

1984—Subsec. (c)(6)(B)(vii). Pub. L. 98–353 substituted “section 152” for “section 153”.

1982—Subsec. (a). Pub. L. 97–164, § 112(a), struck out “Court of Claims, Court of Customs and Patent Appeals, or” before “Court of International Trade” in third and fifth pars.

Subsec. (b). Pub. L. 97–164, § 112(b), struck out “Court of Claims, Court of Customs and Patent Appeals, or” before “Court of International Trade” wherever appearing.

Subsec. (c)(17). Pub. L. 97–164, § 112(c), substituted “United States Claims Court, the Court of Inter-

national Trade, and the Court of Appeals for the Federal Circuit” for “Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court”.

1980—Pub. L. 96-458, §3(b), inserted “judicial discipline” in section catchline.

Subsecs. (a), (b), Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

Subsec. (c), Pub. L. 96-458, §3(a), added subsec. (c).

1957—Subsec. (b), Pub. L. 85-261 added subsec. (b).

1954—Act Feb. 10, 1954, inserted “; substitute judge on failure to retire” in section catchline (but without adding any provisions on such subject to the text of the section, see 1957 amendment), and inserted “under this section” after “retire” in third, fourth, and fifth pars.

1949—Act May 24, 1949, amended section to include provision that appointment of successors to justices or judges must be made with consent of Senate, and inserted “continuously or otherwise” after “Each justice or judge” in last par.

#### CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101-650, set out as a note under section 332 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-702 effective Dec. 1, 1988, see section 407 of Pub. L. 100-702, set out as a note under section 2071 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-458 effective Oct. 1, 1981, see section 7 of Pub. L. 96-458, set out as a note under section 331 of this title.

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

#### NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Pub. L. 102-368, title I, Sept. 23, 1992, 106 Stat. 1118, provided in part that: “Notwithstanding the requirement of section 415 of Public Law 101-650 [set out below] to submit the report mandated by said section not later than one year after the date of the Commission’s first meeting, the National Commission on Judicial Discipline and Removal shall submit to each House of Congress, the Chief Justice of the United States, and the President, the report mandated in said section no later than August 1, 1993.”

Subtitle II of title IV of Pub. L. 101-650, as amended by Pub. L. 102-198, §8(a), (b)(2), Dec. 9, 1991, 105 Stat. 1625, 1626, provided that:

#### “SEC. 408. SHORT TITLE.

“This subtitle may be cited as the ‘National Commission on Judicial Discipline and Removal Act’.

#### “SEC. 409. ESTABLISHMENT.

“There is hereby established a commission to be known as the ‘National Commission on Judicial Discipline and Removal’ (hereinafter in this subtitle referred to as the ‘Commission’).

#### “SEC. 410. DUTIES OF COMMISSION.

“The duties of the Commission are—

“(1) to investigate and study the problems and issues involved in the tenure (including discipline and removal) of an article III judge;

“(2) to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for discipline or removal of judges that would require amendment to the Constitution; and

“(3) to prepare and submit to the Congress, the Chief Justice of the United States, and the President a report in accordance with section 415.

#### “SEC. 411. MEMBERSHIP.

“(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 13 members as follows:

“(1) Three appointed by the President pro tempore of the Senate.

“(2) Three appointed by the Speaker of the House of Representatives.

“(3) Three appointed by the Chief Justice of the United States.

“(4) Three appointed by the President.

“(5) One appointed by the Conference of Chief Justices of the States of the United States.

“(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

“(c) QUORUM.—Six members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

“(d) CHAIRMAN.—The members of the Commission shall select one of the members to be the Chairman.

“(e) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

“(f) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a Member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of a government becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

#### “SEC. 412. COMPENSATION OF THE COMMISSION.

“(a) PAY.—(1) Except as provided in paragraph (2), each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

“(2) A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

“(b) TRAVEL.—All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

#### “SEC. 413. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

“(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.



“(b) STAFF.—The Chairman of the Commission may appoint and fix the pay of such additional personnel as the Chairman finds necessary to enable the Commission to carry out its duties. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the annual rate of pay for any individual so appointed may not exceed a rate equal to the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of such title.

“(c) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

“SEC. 414. POWERS OF COMMISSION.

“(a) HEARINGS AND SESSIONS.—The Commission or, on authorization of the Commission, a member of the Commission may, for the purpose of carrying out this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

“(b) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department, agency, or entity within the executive or judicial branch of the Federal Government information necessary to enable it to carry out this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

“(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission to assist the Commission in carrying out its duties under this subtitle.

“(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

“(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

“SEC. 415. REPORT.

“The Commission shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

“SEC. 416. TERMINATION.

“The Commission shall cease to exist on the date 30 days after the date it submits its report to the President and the Congress under section 415.

“SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated the sum of \$750,000 to carry out the provisions of this subtitle.

“SEC. 418. EFFECTIVE DATE.

“This subtitle shall take effect on the date of the enactment of this Act [Dec. 1, 1990].”

[References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.]

COMPUTATION OF JUDICIAL SERVICE, DISTRICT OF ALASKA

Inclusion of service as judge of the District Court for the Territory of Alaska in the computation of years of judicial service for judges of the United States District Court for the District of Alaska, see Pub. L. 89-70, set out as a note under section 371 of this title.

JUDICIAL SERVICE IN HAWAII

Certain judicial service in Hawaii included within computation of aggregate years of judicial service, see section 14(d) of Pub. L. 86-3, set out as a note under section 371 of this title.

CROSS REFERENCES

Assignment of retired justices or judges to active duty, see section 294 of this title.

Justices and judges appointed to hold office during good behavior—

Court of International Trade, see section 252 of this title.

Courts of Appeals, see Const., Art. 3, §1.

District Courts, see Const., Art. 3, §1.

Supreme Court, see Const., Art. 3, §1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 294, 331, 332, 375, 376, 377, 604, 621 of this title; title 5 sections 8440a, 8701; title 38 section 7253.

§ 373. Judges in territories and possessions

(a) Any judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands who retires from office after attaining the age and meeting the service requirements whether continuous or otherwise, of subsection (b) shall, during the remainder of his lifetime, receive an annuity equal to the salary he is receiving at the time he retires.

(b) The age and service requirements for retirement under subsection (a) of this section are as follows:

Attained age:	Years of service:
65 .....	15
66 .....	14
67 .....	13
68 .....	12
69 .....	11
70 .....	10

(c)(1) Any judge or former judge who is receiving an annuity pursuant to this section may elect to become a senior judge of the court upon which he served before retiring.

(2) The chief judge of a judicial circuit may recall any such senior judge, with the judge's consent, to perform, for the court from which he retired, such judicial duties for such periods of time as the chief judge may specify.

(3) Any act or failure to act by a senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall have the same force and effect as if it were an act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of

the court on which he is serving as a recalled annuitant for purposes of the number of judgeships authorized for that court.

(4) Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall be paid, while performing such duties, the same compensation (in lieu of the annuity payable under subsection (a) of this section) and the same allowances for travel and other expenses as a judge on active duty with the court being served.

(5) Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall at all times be governed by the code of judicial conduct for United States judges approved by the Judicial Conference of the United States.

(d) Any judge who elects to become a senior judge under subsection (c) of this section and who thereafter—

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to recall under subsection (c) of this section);

(2) engages in the practice of law; or

(3) materially violates the code of judicial conduct for United States judges,

shall cease to be a senior judge and to be eligible for recall pursuant to subsection (c) of this section.

(e) Any judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands who is removed by the President of the United States upon the sole ground of mental or physical disability, or who is not reappointed (as judge of such court), shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (1) if his judicial service, continuous or otherwise, aggregates fifteen years or more, to receive during the remainder of his life an annuity equal to the salary he received when he left office, or (2) if his judicial service, continuous or otherwise, aggregated less than fifteen years but not less than ten years, to receive during the remainder of his life an annuity equal to that proportion of such salary which the aggregate number of his years of his judicial service bears to fifteen.

(f) Service at any time as a judge of the courts referred to in subsection (a) or of any other court of the United States, as defined by section 451 of this title, shall be included in the computation of aggregate years of judicial service for purposes of this section.

(g) Any retired judge who is entitled to receive an annuity under subsection (a) shall be entitled to a cost of living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, except that in no case may the annuity payable to such retired judge, as increased under this subsection, exceed 95 per centum of the salary of a United States district judge in regular active service.

(June 25, 1948, ch. 646, 62 Stat. 904; Oct. 31, 1951, ch. 655, § 40, 65 Stat. 724; Feb. 10, 1954, ch. 6, § 5, 68 Stat. 13; Pub. L. 85-508, § 12(d), July 7, 1958, 72 Stat. 348; Pub. L. 86-3, § 14(d), Mar. 18, 1959, 73

Stat. 10; Pub. L. 89-571, § 2, Sept. 12, 1966, 80 Stat. 764; Pub. L. 94-470, Oct. 11, 1976, 90 Stat. 2052; Pub. L. 99-396, § 21(a), Aug. 27, 1986, 100 Stat. 844.)

#### HISTORICAL AND REVISION NOTES

Based on section 634b and 634c of title 48, U.S.C., 1940 ed., Territories and Insular Possessions. [title 28, U.S.C., 1940 ed., §§ 375g, 375g note, 375h] (May 31, 1938, ch. 301, §§ 1, 2, 52 Stat. 591; Apr. 16, 1946, ch. 139, §§ 1, 2, 3, 60 Stat. 90, 91).

Section consolidates sections 634b and 634c of title 48, U.S.C., 1940 ed., as amended and transferred to title 28, U.S.C., 1940 ed., as sections 375g and 375h thereof, with changes of phraseology necessary to effect consolidation.

#### AMENDMENTS

1986—Pub. L. 99-396 amended section generally. Prior to amendment, section read as follows:

“Any judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, who resigns after attaining the age of seventy years and after serving at least ten years, continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years, continuously or otherwise, shall continue during the remainder of his life to receive the salary he received when he relinquished office.

“Any judge of any such courts who is removed by the President of the United States upon the sole ground of mental or physical disability, or who fails of reappointment, shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (a) if his judicial service aggregated sixteen years or more, to receive during the remainder of his life the salary he received when he relinquished office, or (b) if his judicial service aggregated less than sixteen years but not less than ten years, to receive during the remainder of his life that proportion of such salary which the aggregate number of years of his judicial service bears to sixteen.

“Service at any time in any of the courts referred to in the first paragraph, or in any other court under appointment by the President, shall be included in the computation of aggregate years of judicial service for the purposes of this section.

“Any judge who has retired by resigning under the provisions of this section, or who is otherwise entitled to payments under this section, shall be entitled after the effective date of this Act to a cost-of-living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, United States Code: *Provided, however,* That in no case shall the salary or amount payable to such judge as increased under this paragraph exceed 95 per centum of the salary of a United States district court judge in regular active service.”

1976—Pub. L. 94-470 inserted cost-of-living adjustment provision, including limitation of payment to amount no greater than 95 per centum of salary of a United States district court judge in regular active service.

1966—Pub. L. 89-571 removed the United States District Court for District of Puerto Rico from list of courts to which the provisions of section are applicable.

1959—Pub. L. 86-3 struck out references to judges of United States District Court for District of Hawaii and to justices of Supreme Court of Territory of Hawaii. See section 91 of this title and notes thereunder.

1958—Pub. L. 85-508 struck out provisions which related to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1954—Act Feb. 10, 1954, among other changes, inserted provisions for retirement after attaining the age of 65 years and after serving at least fifteen years continuously or otherwise, changed period of service in connection with retirement at age 70, and reduced from 70 to 65 years the age requirement in connection with pay-

ment of salary after removal for mental or physical disability or failure of reappointment.

1951—Act Oct. 31, 1951, inserted reference to judge of District Court of Guam in first par.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 21(c) of Pub. L. 99-396 provided that: “The amendments made by this section [amending this section and section 376 of this title] shall not affect the amount payable to a judge who retired in accordance with the provisions of section 373 of title 28, United States Code, in effect on the day before the date of enactment of this Act [Aug. 27, 1986].”

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-3 effective on admission of State of Hawaii into the Union, see note set out under section 91 of this title. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, upon admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

#### ELECTION, RECALL, STATUS, COMPENSATION, CONDUCT, AND TERMINATION OF SENIOR JUDGES

Pub. L. 98-454, title X, §1002, Oct. 5, 1984, 98 Stat. 1745, provided that:

“(a) Any judge or former judge who is receiving, or will upon attaining the age of sixty-five years be entitled to receive, payments pursuant to section 373 of title 28, United States Code[,] may elect to become a senior judge of the court on which he served while on active duty.

“(b) The chief judge of a judicial circuit may recall any such senior judge of his circuit, with the judge’s consent, to perform in the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands such judicial duties and for such periods of time as the chief judge may specify.

“(c) Any act or failure to act by a senior judge performing judicial duties pursuant to this section shall have the same force and effect as if it were the act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving for purposes of the number of judgeships authorized for that court.

“(d) Any senior judge shall be paid, while performing duties pursuant to this section, the same compensation (in lieu of payments pursuant to section 373 of title 28, United States Code) and the same allowances for travel and other expenses as a judge in active service.

“(e) Senior judges under subsection (a) of this section shall at all times be governed by the code of judicial conduct for the United States judges, approved by the Judicial Conference of the United States.

“(f) Any person who has elected to be a senior judge under subsection (a) of this section and who thereafter—

“(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (b) of this section);

“(2) engages in the practice of law; or

“(3) materially violated the code of judicial conduct for the United States judges, shall cease to be a senior judge and to be eligible for recall pursuant to subsection (b) of this section.”

#### TENURE AND SALARY RIGHTS OF JUDGES IN PUERTO RICO IN OFFICE ON SEPTEMBER 12, 1966

Amendment by Pub. L. 89-571 not to affect tenure of office or right to continue to receive salary after resignation, retirement, or failure of reappointment of any district judge for the District of Puerto Rico in office on Sept. 12, 1966, see section 4 of Pub. L. 89-571, set out as a note under section 134 of this title.

#### PRESERVATION OF RIGHTS OF RETIRED JUDGES OF THE DISTRICT COURT FOR THE DISTRICT OF HAWAII AND JUSTICES OF THE SUPREME COURT OF THE TERRITORY OF HAWAII

Section 14(d) of Pub. L. 86-3 provided in part: “That the amendments made by this subsection shall not affect the rights of any judge or justice who may have retired before the effective date of this subsection”. See Effective Date of 1959 Amendment note above.

#### PRESERVATION OF RIGHTS OF RETIRED JUDGES OF THE DISTRICT COURT FOR THE TERRITORY OF ALASKA

Section 12(d) of Pub. L. 85-508 provided in part: “That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect”. See Effective Date of 1958 Amendment note above.

#### JUDICIAL SERVICE IN HAWAII

Certain judicial service in Hawaii included within computation of aggregate years of judicial service, see section 14(d) of Pub. L. 86-3, set out as a note under section 371 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 376 of this title.

### § 374. Residence of retired judges; official station

Retired judges of the United States are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which he customarily lives shall be deemed to be his official station for the purposes of section 456 of this title. The place where a judge or magistrate recalled under section 155, 375, 636, or 797 of this title maintains the actual abode in which the judge or magistrate customarily lives shall be deemed to be the official station of such judge or magistrate for purposes of section 604(a)(7) of this title.

(June 25, 1948, ch. 646, 62 Stat. 904; Pub. L. 86-312, §1, Sept. 21, 1959, 73 Stat. 587; Pub. L. 99-651, title II, §202(b), Nov. 14, 1986, 100 Stat. 3648.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §402 (Feb. 11, 1938, ch. 23, 52 Stat. 28).

Sections 44 and 133 of this title require that active circuit and district judges shall reside in the circuit or district to which appointed.

Changes were made in phraseology.

#### AMENDMENTS

1986—Pub. L. 99-651 inserted last sentence.

1959—Pub. L. 86-312 inserted sentence to provide that place where retired judge maintains actual abode shall be deemed to be his official station and inserted “; official station” in section catchline.

#### CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-651 effective Jan. 1, 1987, see section 203 of Pub. L. 99-651, set out as a note under section 155 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 456 of this title.

**§ 375. Recall of certain judges and magistrates**

(a)(1) A bankruptcy judge or a United States magistrate appointed under chapter 43 of this title, who has retired under the provisions of section 377 of this title or under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title, may agree to be recalled to serve under this section for a period of five years as a bankruptcy judge or magistrate, as the case may be, upon certification that substantial service is expected to be performed by such retired judge or magistrate during such 5-year period. With the agreement of the judge or magistrate involved, a certification under this subsection may be renewed for successive 5-year periods.

(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.

(3) For purposes of this section, the term “bankruptcy judge” means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984.

(b) A judge or magistrate recalled under this section may exercise all of the powers and duties of the office of judge or magistrate held at the time of retirement, including the ability to serve in any other judicial district to the extent applicable, but may not engage in the practice of law or engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of duties as a judicial officer.

(c) During the 5-year period in which a certification under subsection (a) is in effect, the judge or magistrate involved shall receive, in addition to the annuity provided under the provisions of section 377 of this title or under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which the judge or magistrate is recalled. The annuity of a bankruptcy judge or magistrate who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired.

(d) A certification under subsection (a) may be terminated in accordance with section 372(c) of this title, and such a certification shall be terminated upon the death of the recalled judge or magistrate involved.

(e) Except as provided in subsection (b), nothing in this section shall affect the right of judges or magistrates who retire under the provisions of chapter 83 or chapter 84 of title 5 to serve as reemployed annuitants in accordance with the provisions of title 5. A judge or magistrate to whom this section applies may be recalled under section 155, 636(h), or 797 of this title, as the case may be, other than during a 5-

year period in which a certification under subsection (a) is in effect with respect to that judge or magistrate.

(f) For purposes of determining the years of service requirements in order to be eligible for recall under this section, any service as a bankruptcy judge or a United States magistrate, and any prior service as a referee in bankruptcy or a United States commissioner, may be credited.

(g) Except as provided in subsection (c), a judge or magistrate recalled under this section who retired under the applicable provisions of title 5 shall be considered to be a reemployed annuitant under chapter 83 or chapter 84, as the case may be, of title 5.

(h) The Judicial Conference of the United States may promulgate regulations to implement this section.

(Added Pub. L. 99-651, title II, §201(b)(1), Nov. 14, 1986, 100 Stat. 3647; amended Pub. L. 100-659, §4(b), Nov. 15, 1988, 102 Stat. 3918; Pub. L. 101-650, title III, §325(b)(2), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 102-572, title IX, §904(a), Oct. 29, 1992, 106 Stat. 4517.)

## PRIOR PROVISIONS

A prior section 375, added Aug. 28, 1954, ch. 1053, §1, 68 Stat. 918; amended Aug. 3, 1956, ch. 944, §1(b), 70 Stat. 1021; Aug. 22, 1972, Pub. L. 92-397, §1, 86 Stat. 579, provided for annuities to widows of justices, prior to repeal by Pub. L. 96-504, §5, Dec. 5, 1980, 94 Stat. 2742.

## AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-572, §904(a)(1), struck out “, a judge of the Claims Court,” after “A bankruptcy judge” and “, judge of the Claims Court,” after “a bankruptcy judge”.

Subsec. (a)(2). Pub. L. 102-572, §904(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For purposes of paragraph (1) of this subsection, a certification may be made—

“(A) in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located; and

“(B) in the case of a judge of the Claims Court, by the chief judge of the United States Claims Court.”

Subsec. (a)(3). Pub. L. 102-572, §904(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “For purposes of this section—

“(A) the term ‘bankruptcy judge’ means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984; and

“(B) the term ‘judge of the Claims Court’ means a judge of the United States Claims Court who is appointed under chapter 7 of this title or who has served under section 167 of the Federal Courts Improvement Act of 1982.”

Subsec. (f). Pub. L. 102-572, §904(a)(4), struck out “, a judge of the Claims Court,” after “bankruptcy judge” and “, a commissioner of the Court of Claims,” after “referee in bankruptcy”.

1990—Subsec. (a)(1). Pub. L. 101-650 substituted “section 377 of this title” for “section 377 of title”.

1988—Subsec. (a)(1). Pub. L. 100-659, §4(b)(1), inserted “under the provisions of section 377 of title or” after “has retired”.

Subsec. (c). Pub. L. 100-659, §4(b)(2), inserted “under the provisions of section 377 of this title or” after “annuity provided” and inserted at end “The annuity of a bankruptcy judge or magistrate who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired.”

Subsec. (g). Pub. L. 100-659, §4(b)(3), inserted “who retired under the applicable provisions of title 5” after “section”.

#### CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, set out as an Effective Date note under section 377 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 203 of Pub. L. 99-651, set out as an Effective Date of 1986 Amendment note under section 155 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 376, 377, 631, 636 of this title.

### § 376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

(1) “judicial official” means:

(A) a Justice or judge of the United States, as defined by section 451 of this title;

(B) a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands;

(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (b) of section 627 of this title;

(E) an administrative assistant to the Chief Justice of the United States, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(F) a full-time bankruptcy judge or a full-time United States magistrate; or

(G) a judge of the United States Court of Federal Claims;

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, (iii) January 1, 1977, (iv) October 1, 1986, (v) the date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date, (vi) the date of the enactment of the Federal Courts Study Committee Implementation Act

of 1990, in the case of a full-time judge of the Court of Federal Claims in active service on that date, or (vii) the date of the enactment of the Federal Courts Administration Act of 1992; (2) “retirement salary” means:

(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

(B) in the case of a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, (i) an annuity paid under subsection (a) of section 373 of this title or (ii) compensation paid under paragraph (4) of subsection (c) of section 373 of this title;

(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (c) or (d) of section 627 of this title;

(E) in the case of an administrative assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title; and

(G) in the case of a judge of the United States Court of Federal Claims, an annuity paid under section 178 of this title;

(3) “widow” means the surviving wife of a “judicial official”, who:

(A) has been married to him for at least one year on the day of his death; or

(B) is the mother of issue by that marriage;

(4) “widower” means the surviving husband of a “judicial official”, who:

(A) has been married to her for at least one year on the day of her death; or

(B) is the father of issue by that marriage;

(5) “child” means:

(A) an unmarried child under eighteen years of age, including (i) an adopted child and (ii) a stepchild or recognized natural child who lived with the judicial official in a regular parent-child relationship;

(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a

student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under paragraph (5)(B) of this subsection, before the termination of that annuity;

(6) “former spouse” means a former spouse of a judicial official if the former spouse was married to such judicial official for at least 9 months; and

(7) “assassinated” and “assassination” mean the killing of a judicial official described in paragraph (1)(A), (B), (F), or (G) of this subsection that is motivated by the performance by that judicial official of his or her official duties.

(b)(1) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

(A) of a justice or judge of the United States retired from regular active service under section 371(b) or section 372(a) of this title,

(B) of a judge of the United States Court of Federal Claims retired under section 178 of this title, or

(C) of a judicial official on recall under section 155(b), 373(c)(4), 375, or 636(h) of this title, shall be an amount equal to 2.2 percent of retirement salary.

(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within 90 days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred retirement salary which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have re-

voked his or her election under subsection (a) of this section.

(3) The amounts deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the “Judicial Survivors’ Annuities Fund” established by section 3 of the Judicial Survivors’ Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions (and any deductions made under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5) shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section (and under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5).

(c)(1) There shall also be deposited to the credit of the Judicial Survivors’ Annuities Fund, in accordance with such procedures as the Comptroller General of the United States may prescribe, amounts required to reduce to zero the unfunded liability of the Judicial Survivors’ Annuities Fund: *Provided*, That such amounts shall not exceed the equivalent of 9 percent of salary or retirement salary. Such deposits shall, subject to appropriations Acts, be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the Judicial Survivors’ Annuities Fund for any use required under this section.

(2) For purposes of paragraph (1), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Judicial Survivors’ Annuities Fund, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of judicial officials; plus

(B) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this paragraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, United States Code, with respect to the judicial survivors’ annuities plan established by this section.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the “Judicial Survivors’ Annuities Fund”:

(1) a sum equal to 3.5 percent of that salary, including “retirement salary”, which he or

she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

(2) a sum equal to 3.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts: *Provided*, That, in each instance in which a judicial official does elect to make such deposits in installments, the Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section: *Provided*, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1920.

(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the "Judicial Survivors' Annuities Fund".

(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the "Judicial Survivors' Annuities Fund" which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this

section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 2.2 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section, a "reasonable period of time" shall be presumed to be no longer than 1 year following the date upon which such judicial official relinquishes his or her office.

(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section (A) after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made—

(i) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section; or

(ii) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

(I) 10 percent of the average annual salary determined under subsection (l)(1) of this section; or

(II) 20 percent of such average annual salary, divided by the number of children;

whichever is smallest; or

(iii) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to:

(I) the amount of the annuity to which the judicial official's widow or widower would have been entitled under clause (i) of this paragraph, had such widow or widower survived the judicial official, divided by the number of children; or

(II) 20 percent of the average annual salary determined under subsection (l)(1) of this section; or

(III) 40 percent of such average annual salary amount, divided by the number of children;

whichever is smallest.

(2) An annuity payable to a widow or widower under clause (i) or (ii) of paragraph (1) of this subsection shall be terminated upon his or her death or remarriage before attaining age 55.

(3) An annuity payable to a child under this subsection shall terminate:

(A) if such child is receiving an annuity based upon his or her status under paragraph (5)(A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

(B) if such child is receiving an annuity based upon his or her status under paragraph (5)(B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with paragraph (5)(B) of subsection (a) of this section, whichever occurs first: *Provided*, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of paragraph (5)(C) of subsection (a) of this section;

(C) if such child is receiving an annuity based upon his or her status under paragraph (5)(C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

(D) on the last day of the month during which such child dies or marries.

(4) An annuity payable to a child or children under paragraph (1)(ii) of this subsection shall be recomputed and paid as provided in paragraph (1)(iii) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under paragraph (1)(ii) of this subsection.

(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.

(i)(1) All questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or deny any such annuity for failure to submit to any such examination.

(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination.

(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (l) of this section shall include—

(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under section 371 or subsection (a) of section 372 of this title;



(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section: *Provided*, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section;

(4) those years during which such judicial official served as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;<sup>1</sup> and

(5) those years during which such judicial official had deductions withheld from his or her retirement salary in accordance with subsection (b)(1) or (2) of this section.

For the purposes of this subsection the term "years" shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

(1) 1.5 percent of the average annual salary, including retirement salary, which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary was greatest, or (ii) if such judicial official has so served less than three years, then during the total period of such service prior to his or her death, multiplied by the total of:

(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

(D) the number of years during which the judicial official had deductions withheld

from his or her retirement salary under subsection (b)(1) or (2) of this section; plus

(E) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection;

except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary. Any annuity determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, and by the amount of any annuity payable to a former spouse under subsection (t).

(m) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, each annuity payable from the Judicial Survivors' Annuities Fund shall be increased at the same time by the same percentage by which annuities are increased under that section.

(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, except as provided in subsections (s) and (t), or subject to execution, levy, attachment, garnishment, or other legal process.

(o)(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section, and;

(A) subject to paragraph (2) of this subsection, before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

(B) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section; or

(C) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) or (t) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on

<sup>1</sup> So in original. Comma probably should be a semicolon.

December 31, of each year, to the date of that judicial official's death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

Second, if there be no such beneficiary, to the widow or widower of such judicial official;

Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.

(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (o) of this section.

(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such annuitant;

Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: *Provided*, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity.

(s) A judicial official who has a former spouse may elect, under procedures prescribed by the Director of the Administrative Office of the United States Courts, to provide a survivor annuity for such former spouse under subsection (t). An election under this subsection shall be made at the time of retirement, or, if later, within 2 years after the date on which the marriage of the former spouse to the judicial official is dissolved. An election under this subsection—

(1) shall not be effective to the extent that it—

(A) conflicts with—

(i) any court order or decree referred to in subsection (t)(1), which was issued before the date of such election, or

(ii) any agreement referred to in such subsection which was entered into before such date; or

(B) would cause the total of survivor annuities payable under subsections (h) and (t) based on the service of the judicial official to exceed 55 percent of the average annual salary (as such term is used in subsection (l)) of such official; and

(2) shall not be effective, in the case of a judicial official who is then married, unless it is made with the spouse's written consent.

The Director of the Administrative Office of the United States Courts shall provide by regulation that paragraph (2) of this subsection may be waived if the judicial official establishes to the satisfaction of the Director that the spouse's whereabouts cannot be determined, or that, due to exceptional circumstances, requiring the judicial official to seek the spouse's consent would otherwise be inappropriate.

(t)(1) Subject to paragraphs (2) through (4) of this subsection, a former spouse of a deceased judicial official is entitled to a survivor annuity under this section if and to the extent expressly provided for in an election under subsection (s), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(A) the maximum amount that would be payable as an annuity to a widow or widower under subsection (7), determined without taking into account any reduction of such annuity caused by payment of an annuity to a former spouse; and

(B) the amount of any annuity payable under this subsection to any other former spouse of the judicial official, based on an election previously made under subsection (s), or a court order previously issued.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the judicial official dies, or

(ii) the first day of the second month beginning after the date on which the Director of the Administrative Office of the United States Courts receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Director may prescribe,

whichever is later, and

(B) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(4) For purposes of this section, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement of the judicial official concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.

(v) Subject to the terms of a decree, court order, or agreement described in subsection (t)(1), if any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official establishes to the satisfac-

tion of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(w) The Comptroller General of the United States shall, at the end of each 3-fiscal year period, determine whether the contributions by judicial officials under subsection (b) during that 3-year period accounted for 50 percent of the costs of the Judicial Survivors' Annuities Fund and if not, then what adjustments in the contribution rates under subsection (b) should be made to achieve that 50 percent figure. The Comptroller General shall report the results of each determination under this subsection to the Congress.

(Added Aug. 3, 1956, ch. 944, § 2, 70 Stat. 1021; amended Pub. L. 85-508, § 12(n), July 7, 1958, 72 Stat. 348; Pub. L. 90-219, title II, § 202, Dec. 20, 1967, 81 Stat. 668; Pub. L. 90-466, § 1(a), Aug. 8, 1968, 82 Stat. 662; Pub. L. 92-397, §§ 2, 3(c), Aug. 22, 1972, 86 Stat. 579, 580; Pub. L. 94-554, § 2, Oct. 19, 1976, 90 Stat. 2603; Pub. L. 95-598, title II, § 211, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 99-336, § 2(a), (d)(1)-(3), (e), June 19, 1986, 100 Stat. 633, 635-637; Pub. L. 99-396, § 21(b), Aug. 27, 1986, 100 Stat. 846; Pub. L. 100-659, § 3(a), Nov. 15, 1988, 102 Stat. 3917; Pub. L. 100-702, title X, § 1017(a), Nov. 19, 1988, 102 Stat. 4670; Pub. L. 101-650, title III, §§ 306(b), 322(a)-(f), (g)[(h)], Dec. 1, 1990, 104 Stat. 5109, 5117-5120; Pub. L. 102-572, title II, § 201(a)-(i), title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4508-4510, 4516; Pub. L. 104-317, title III, §§ 302, 308, Oct. 19, 1996, 110 Stat. 3851, 3853.)

#### REFERENCES IN TEXT

The date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (a)(1)(v), is the date of the enactment of Pub. L. 100-659, which was approved Nov. 15, 1988.

The date of the enactment of the Federal Courts Study Committee Implementation Act of 1990, referred to in subsec. (a)(1)(vi), is the date of enactment of Pub. L. 101-650, which was approved Dec. 1, 1990.

The date of the enactment of the Federal Courts Administration Act of 1992, referred to in subsec. (a)(1)(vii), is the date of enactment of Pub. L. 102-572, which was approved Oct. 29, 1992.

Section 3 of the Judicial Survivors' Annuities Reform Act, referred to in subsec. (b)(3), is section 3 of Pub. L. 94-554, which is set out as a note below.

#### AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-317, § 308, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

"(A) of a justice or judge of the United States retired from regular active service who is described in section 371(b)(1) of this title,

"(B) of a justice or judge of the United States retired under section 372(a) of this title who is willing and able to perform judicial duties in accordance with section 294 of this title,

"(C) of a judge of the United States Court of Federal Claims retired under section 178(a) or (b) of this title who meets the requirements of section 178(d) of this title, or

“(D) of a judicial official on recall under section 155(b), 797, 373(c)(4), 375, or 636(h) of this title, shall be an amount equal to 2.2 percent of retirement salary.”

Subsec. (o)(1). Pub. L. 104-317, §302, substituted “while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section,” for “or while receiving ‘retirement salary,’” in introductory provisions.

1992—Subsec. (a)(1). Pub. L. 102-572, §§201(a), 902(b)(2), in concluding provisions substituted “Court of Federal Claims” for “Claims Court” in cl. (vi) and added cl. (vii).

Subsec. (a)(1)(G), (2)(G). Pub. L. 102-572, §902(b)(1), substituted “United States Court of Federal Claims” for “United States Claims Court”.

Subsec. (b). Pub. L. 102-572, §201(b), designated first sentence as par. (1), substituted “a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary,” and second sentence for “including any ‘retirement salary’, a sum equal to 5 percent of that salary.”, added par. (2), designated last 3 sentences as par. (3), and substituted “deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection” for “so deducted and withheld from the salary of each such judicial official”.

Subsec. (d)(1), (2). Pub. L. 102-572, §201(c), substituted “3.5 percent” for “5 percent”.

Subsec. (g). Pub. L. 102-572, §201(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “If any judicial official resigns from office without receiving any ‘retirement salary,’ all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947; and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a ‘reasonable period of time’ shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.”

Subsec. (h)(1). Pub. L. 102-572, §201(e), substituted “while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section” for “or while receiving ‘retirement salary,’”.

Subsec. (k)(5). Pub. L. 102-572, §201(f), added par. (5).

Subsec. (l)(1). Pub. L. 102-572, §201(g), substituted “, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary” for “in which his or her annual salary” in cl. (i) of introductory provisions, added subpar. (D), and redesignated former subpar. (D) as (E).

Subsec. (v). Pub. L. 102-572, §201(h), added subsec. (v).

Subsec. (w). Pub. L. 102-572, §201(i), added subsec. (w).

1990—Subsec. (a)(1). Pub. L. 101-650, §306(b)(1), added subpar. (G) and cl. (vi) before semicolon at end.

Subsec. (a)(2)(G). Pub. L. 101-650, §306(b)(2), added subpar. (G).

Subsec. (a)(5)(C). Pub. L. 101-650, §322(g)(2), substituted “paragraph” for “subparagraph”.

Subsec. (a)(7). Pub. L. 101-650, §322(b), added par. (7).

Subsec. (b). Pub. L. 101-650, §306(b)(3), substituted “section 178 or 377” for “section 377” in two places.

Subsec. (h)(1). Pub. L. 101-650, §322(a)(1)-(4), inserted “(A)” before “after having completed”, inserted “, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made” after “have actually been made”, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, in cl. (ii) redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in cl. (iii) redesignated

former cls. (i) to (iii) as subcls. (I) to (III), respectively, and in subcl. (I) substituted “clause (i) of this paragraph” for “subparagraph (1)(A) of this subsection”.

Subsec. (h)(2). Pub. L. 101-650, §322(g)(1)(A), substituted “clause (i) or (ii) of paragraph (1)” for “subparagraphs (1)(A) or (1)(B)”.

Subsec. (h)(3). Pub. L. 101-650, §322(g)(1)(B), substituted “paragraph” for “subparagraph” wherever appearing.

Subsec. (h)(4). Pub. L. 101-650, §322(g)(1)(C), substituted “paragraph (1)(ii)” for “subparagraph (1)(B)” in two places and “paragraph (1)(iii)” for “subparagraph (1)(C)”.

Subsec. (h)(6). Pub. L. 101-650, §322(a)(5), added par. (6).

Subsec. (i). Pub. L. 101-650, §322(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (l)(1)(ii). Pub. L. 101-650, §322(d), struck out “but more than eighteen months,” after “less than three years,”.

Subsec. (o). Pub. L. 101-650, §322(e), inserted “(1)” after “(o)”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, inserted “subject to paragraph (2) of this subsection,” before “before having completed” in subpar. (A), and added par. (2).

Subsec. (u). Pub. L. 101-650, §322(f), added subsec. (u).

1988—Subsec. (a)(1). Pub. L. 100-659, §3(a)(1), added subpar. (F) and substituted “, (iv) October 1, 1986, or (v) the date of the enactment of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date;” for “; or (iv) October 1, 1986;” in concluding provisions.

Subsec. (a)(2)(F). Pub. L. 100-659, §3(a)(2), added subpar. (F).

Subsec. (b). Pub. L. 100-659, §3(a)(3), inserted “(and any deductions made under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)” after “deductions” and “(and under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)” before period at end of last sentence.

Subsec. (m). Pub. L. 100-702 amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: “Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased, each annuity payable from the ‘Judicial Survivors’ Annuities Fund’, which is based, in whole or in part, upon a deceased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.”

1986—Subsec. (a)(1). Pub. L. 99-336, §2(a)(1), substituted “she marries, (iii) January 1, 1977; or (iv) October 1, 1986” for “she marries, or (iii) the date upon which the Judicial Survivors’ Annuities Reform Act becomes effective” in concluding provision.

Subsec. (a)(1)(B). Pub. L. 99-336, §21(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;”.

Subsec. (a)(2)(B). Pub. L. 99-336, §21(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, salary paid after retirement from office (i) by resignation on salary under section 373 of this title or (ii) by removal or failure of reappointment after not less than ten years’ judicial service;”.

Subsec. (a)(6). Pub. L. 99-336, §2(d)(1), added par. (6).

Subsec. (b). Pub. L. 99-336, §2(a)(2), substituted “5 percent” for “4.5 percent”.

Subsec. (c). Pub. L. 99-336, §2(a)(3), in amending subsec. (c) generally, designated existing provisions as par. (1), substituted provisions which related to amounts deposited to credit of Judicial Survivors’ Annuities Fund to reduce unfunded liability of Fund to zero, for provisions which related to deposit of amounts matching those deducted and withheld in accordance with subsec. (b), and added pars. (2) and (3).

Subsec. (d). Pub. L. 99-336, §2(a)(2), substituted “5 percent” for “4.5 percent” in pars. (1) and (2).

Subsec. (h)(1)(B). Pub. L. 99-336, §2(a)(4)(A), substituted “10 percent of the average annual salary determined under subsection (l)(1) of this section” for “\$1,548” in cl. (i) and “20 percent of such average annual salary” for “\$4,644” in cl. (ii).

Subsec. (h)(1)(C). Pub. L. 99-336, §2(a)(4)(B), substituted “20 percent of the average annual salary determined under subsection (l)(1) of this section” for “\$1,860” in cl. (ii) and “40 percent of such average annual salary amount” for “\$5,580” in cl. (iii).

Subsec. (h)(2). Pub. L. 99-336, §2(a)(4)(C), inserted “before attaining age 55” after “or remarriage”.

Subsec. (k)(1). Pub. L. 99-336, §2(e), struck out “under subsection (b) of” before “section 371”.

Subsec. (l). Pub. L. 99-336, §2(a)(5)(C), (d)(3)(A), substituted provisions which set annuity limit not to exceed 50 percent of, nor be less than 25 percent of, average annual salary, for provisions which set annuity limit not to exceed 40 percent of average annual salary, and inserted provision that annuity determined in accordance with provisions of subsec. (l) be reduced by the amount of any annuity payable to a former spouse under subsection (t).

Subsec. (l)(1). Pub. L. 99-336, §2(a)(5)(A), substituted “1.5 percent” for “1¼ percent”.

Subsec. (l)(2). Pub. L. 99-336, §2(a)(5)(B), substituted “of this subsection” for “of this section”.

Subsec. (n). Pub. L. 99-336, §2(d)(3)(B), inserted “except as provided in subsections (s) and (t),” after “in equity,” in last sentence.

Subsec. (o)(2), (3). Pub. L. 99-336, §2(d)(3)(C), inserted “or (t)” after “subsection (h)”.

Subsecs. (s), (t). Pub. L. 99-336, §2(d)(2), added subsecs. (s) and (t).

1978—Subsec. (a)(2)(A). Pub. L. 95-598 directed the amendment of subpar. (A) by adding cl. (iii) relating to bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Pub. L. 94-554 amended section generally so as to reform and update the existing judicial survivors’ annuity program providing benefits for surviving spouses and children of all Federal Justices and judges who elect to join the program by placing the program in an actuarially sound fiscal condition, providing more liberal eligibility standards and reasonable increases in existing annuity amounts made necessary by increases in the cost of living since existing annuities were commenced, and by establishing a method for providing future periodic increases in annuity amounts by keying them into increases in judicial salaries.

1972—Subsecs. (a) to (c), (e) to (g), (i) to (k), (n), (o). Pub. L. 92-397 substituted “of justices and judges of the United States” for “of judges” in section catchline and substituted “justice or judge” for “judge” and “justice’s or judge’s” for “judge’s” wherever appearing.

1968—Subsec. (a). Pub. L. 90-466 struck out “(or within six months after the enactment of this section)” after “takes office” and authorized Federal judges to elect within six months of marriage to participate in the judicial survivors annuity system.

1967—Subsecs. (r), (s). Pub. L. 90-219 added subsecs. (r) and (s).

1958—Subsec. (q). Pub. L. 85-508 struck out provisions which related to the judge of the District Court for the Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

## CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

## EFFECTIVE DATE OF 1992 AMENDMENT

Section 202 of title II of Pub. L. 102-572 provided that: “This title [amending this section and enacting provisions set out below] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 29, 1992].”

Amendment by section 902(b) of Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT; TRANSITION PROVISIONS

Amendment by section 306(b) of Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, as amended, set out as a note under section 8331 of Title 5, Government Organization and Employees.

Section 322(g) of Pub. L. 101-650 provided that:

“(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act [probably should be “section”, which amended this section] shall apply to all judicial officials assassinated on or after May 28, 1979.

“(2) RULES FOR RETROACTIVE APPLICATION.—(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act [Dec. 1, 1990], if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (o) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

“(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions [had] been made for 18 months before the judicial official’s death, plus interest as described in subparagraph (A).

“(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors’ Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

“(3) DEFINITION.—For purposes of this subsection, the term—

“(A) ‘assassinated’ has the meaning given that term in section 376(a)(7) of title 28, United States Code, as added by this section; and

“(B) ‘judicial official’ has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.”

## EFFECTIVE DATE OF 1988 AMENDMENTS

Section 1017(c) of title X of Pub. L. 100-702 provided that: “The amendment made by subsection (a) [amend-

ing this section] shall apply with respect to increases in annuities which are made under section 8340(b) of title 5, United States Code, on or after the date of enactment of this title [Nov. 19, 1988].”

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, set out as an Effective Date note under section 377 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-396 not to affect the amount payable to a judge who retired in accordance with the provisions of section 373 of this title in effect on the day before Aug. 27, 1986, see section 21(c) of Pub. L. 99-396, set out as a note under section 373 of this title.

Section 2(f) of Pub. L. 99-336 provided that: “This section [amending this section and enacting provisions set out below] shall take effect on October 1, 1986.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 8 of Pub. L. 94-554 provided: “That this Act [amending this section and enacting provisions set out below] shall become effective on the first day of the third month following the month in which it is enacted [Jan. 1, 1977], or on October 1, 1976, whichever occurs last.”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

#### RETROACTIVE EFFECT OF 1967 AMENDMENT

The provisions of section 611(a) of this title, the first paragraph of section 611(b) of this title, and subsec. (s) of this section, as added by Pub. L. 90-219, applicable to a Director or former Director of the Administrative Office of the United States Courts who was first appointed prior to Dec. 20, 1967 if at the time such Director or former Director left or leaves such office he had, or shall have, attained the age of sixty-five years and completed fifteen years of service as Director of the Administrative Office of the United States Courts and if, on or before the expiration of six months following Dec. 20, 1967, he makes the election referred to in section 611(a) of this title or subsec. (s) of this section, or both, as the case may be, see section 205(b) of Pub. L. 90-219, set out as a Retroactive Effect note under section 611 of this title.

#### SAVINGS PROVISION

Section 6 of Pub. L. 94-554 provided: “That the benefits conferred by this Act shall, on the date upon which this Act becomes effective [Jan. 1, 1977], immediately become available to any individual then receiving an annuity under section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended: *Provided*, That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his or her survivors may be entitled by virtue of that individuals having contributed to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) as amended, before the date upon which this Act becomes effective.”

#### CREDIT FOR CONTRIBUTIONS PRIOR TO 1992 AMENDMENT AT HIGHER RATE

Section 201(j) of title II of Pub. L. 102-572 provided that: “Notwithstanding any other provision of law, the contribution under section 376(b)(1) or (2) of title 28, United States Code (as amended by this section), of any judicial official who is within the purview of such section 376 on the effective date of this title [Oct. 29, 1992] shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act [Oct. 29, 1992] to the credit of the Judicial Survivors’ Annuities Fund or for 18 months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term ‘years’ shall mean full years and twelfth parts thereof.”

#### REDEPOSIT OF CONTRIBUTIONS PRIOR TO 1992 AMENDMENT

Section 201(k) of Pub. L. 102-572 provided that: “Any judicial official as defined in section 376(a)(1) of title 28, United States Code, who makes an election under section 376(b) of title 28, United States Code, may make a redeposit, as required by section 7 of Public Law 94-554 [set out below] and section 2(c)(2) of Public Law 99-336 [set out below], to the credit of the Judicial Survivors’ Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. If a judicial official elects to make a redeposit in installments—

“(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last 18 months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and

“(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment.”

#### AUDIT BY GENERAL ACCOUNTING OFFICE

Section 201(l) of Pub. L. 102-572 provided that: “The Comptroller General shall—

“(1) conduct an audit of the judicial survivors[] annuities program under section 376 of title 28, United States Code, for the 3-year period beginning on the date of the enactment of this Act [Oct. 29, 1992]; and

“(2) report to the Congress, not later than 60 days after the end of that 3-year period, on the results of such audit, comparing such program to other survivors[] annuities programs within the Federal Government.”

#### INCREASE FOR EXISTING ANNUITANTS

Section 1017(b) of title X of Pub. L. 100-702 provided that: “Each annuity payable from the Judicial Survivors’ Annuities Fund under section 376 of title 28, United States Code, on the date of the enactment of this title [Nov. 19, 1988] shall be increased by 10 percent, effective on such date of enactment.”

#### SURVIVORS’ ANNUITIES FOR INCUMBENTS

Section 3(b) of Pub. L. 100-659 provided that: “In the case of a bankruptcy judge or magistrate [now United States magistrate judge] who elects an annuity under section 2(c) [28 U.S.C. 377 note], only service for which an annuity under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.”

#### COVERED BENEFICIARIES UNDER PUB. L. 99-336

Section 2(b) of Pub. L. 99-336 provided that: “The benefits conferred by section 376 of title 28, United States Code, by reason of the amendments made by this sec-

tion shall apply only to individuals who become eligible for annuities under such section on or after the effective date of this section [Oct. 1, 1986], except that—

“(1) such annuities shall be computed in accordance with the provisions of section 376 of title 28, United States Code, as amended by this section, notwithstanding contributions or deposits made in accordance with applicable law at lower rates; and

“(2) no additional liability shall be created with respect to deposits made in accordance with applicable law before the effective date of this section, or after such effective date pursuant to an agreement entered into before such effective date.”

#### REVOCATION OF ELECTION; ELIGIBILITY SUBSEQUENT TO REVOCATION

Section 2(c) of Pub. L. 99-336 provided that:

“(1) Within 180 days after the effective date of this section [Oct. 1, 1986], any judicial official who, before such effective date, made an election under section 376 of title 28, United States Code, to come within the purview of that section, shall be entitled to revoke that election. Such revocation shall constitute a complete withdrawal from the judicial survivors' annuities program provided for in such section 376. No such revocation shall be effective unless it is submitted in writing to the Director of the Administrative Office of the United States Courts, and until such writing is received by the Director. Upon receipt by the Director of such writing, any rights to survivorship benefits for the survivors of such judicial official shall terminate, and all amounts credited to the individual account of such judicial official under section 376(e), together with interest at 3 percent per annum, compounded on December 31 of each year to such date of revocation, shall be returned to that judicial official in a lump-sum payment.

“(2) Any judicial official who makes a revocation under paragraph (1) of this subsection and who thereafter becomes eligible to make an election under section 376(b) of title 28, United States Code, may make such election only if such judicial official redeposits, to the credit of the Judicial Survivors' Annuities Fund, the full amount of the lump-sum payment made to such judicial official under paragraph (1) of this subsection, together with interest at 3 percent per annum, compounded on December 31 of each year from the date of such revocation until the date upon which that amount is so redeposited.

“(3) Any judicial official who fails to revoke an election in accordance with paragraph (1) of this subsection shall be deemed to have irrevocably waived the right to make that revocation.”

#### PAYMENT OF RETIREMENT SALARY PURSUANT TO COURT DECREE OF DIVORCE, ETC.

Section 2(d)(4) of Pub. L. 99-336 provided that: “Payments of retirement salary as defined in section 376(a)(2) of title 28, United States Code, which would otherwise be made to the judicial official upon whose service the retirement salary is based, shall be paid (in whole or in part) to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person. This paragraph shall apply only to payments made after the date of receipt by the Director of the Administrative Office of [the] United States Courts of written notice of such decree, order, or agreement, and such additional information and documentation as the Director may prescribe. As used in this paragraph, ‘court’ means any court of any State or the District of Columbia.”

#### ANNUITY PAYMENT TO SURVIVING SPOUSES OF JUDGES WHO DIED BEFORE OCTOBER 19, 1976

Pub. L. 96-504, § 3, Dec. 5, 1980, 94 Stat. 2741, provided that:

“(a) As of the first pay period beginning after the effective date of this Act [Dec. 5, 1980], a surviving spouse, other than a surviving spouse who has remarried, of any Justice of the United States (as defined by section 451 of title 28, United States Code), who died before October 19, 1976, shall be paid an annuity in accordance with the provisions of section 376 of title 28, United States Code, at a rate of \$20,000 per year as if such Justice had elected to come within the provisions of, and having made the full deposit required by, section 376(d) of title 28, United States Code.

“(b) Notwithstanding the provisions of section 376(h) of title 28, United States Code, such annuity shall be payable as provided in section 376(m) of title 28, United States Code, until the date of the death of any such spouse.”

#### JUDICIAL SURVIVORS' ANNUITY FUND; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 96-504, § 4, Dec. 5, 1980, 94 Stat. 2742, required the Secretary of the Treasury in consultation with the Director of the Administrative Office of the United States Courts to determine as of Dec. 5, 1980, and deposit as soon as possible thereafter, the amount necessary to offset any actuarial deficiency in the Judicial Survivors Annuities Fund.

#### JUDICIAL SURVIVORS' ANNUITIES FUND

Section 3 of Pub. L. 94-554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] there shall be established on the books of the Treasury a fund which shall be known as ‘The Judicial Survivors' Annuities Fund, and all money credited to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended, shall be transferred to the credit of the Judicial Survivors' Annuities Fund established by this section.”

#### COMPENSATION FOR ACTUARIAL DEFICIENCY IN THE ANNUITIES FUND

Section 4 of Pub. L. 94-554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] the Secretary of the Treasury shall ascertain from the Director of the Administrative Office of the United States Courts the amount of the actuarial deficiency in the fund transferred by section 3 of this Act [see Judicial Survivors' Annuities Fund note above] on the date of that fund's transfer and, at the earliest time thereafter at which appropriated funds in that amount shall become available, the Secretary shall deposit such funds, in a single payment, into the Judicial Survivors' Annuities Fund established by section 3 of this Act. Such funds as are necessary to carry out this section are hereby authorized to be appropriated.”

#### INCREASES IN WIDOWS' ANNUITIES PAID UNDER SECTION 2 OF ACT AUGUST 3, 1956

Section 5 of Pub. L. 94-554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] each annuity then being paid to a widow from the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended, shall be increased by an amount equal to one-fifth of 1 percent of the amount of such annuity multiplied by the number of months which have passed since the commencement of that annuity. For the purposes of this section, any fractional part of a month which numbers less than fifteen full days shall be excluded from the Computation of the number of months and any fractional part of a month which numbers fifteen full days or more shall be included in the computation as one full month. Such funds as are necessary to carry out this section are authorized to be appropriated and, upon appropriation, shall be deposited by the Secretary of the Treasury, in a single payment, to credit of the Judicial Survivors' Annuities Fund established by section 3 of this Act [see Judicial Survivors' Annuities Fund note above].”

REVOCATION OF ELECTION TO PARTICIPATE IN  
ANNUITIES PROGRAM

Section 7 of Pub. L. 94-554 provided: "That, at any time within one hundred and eighty days after the date upon which this Act becomes effective [Jan. 1, 1977], any judicial official who has, prior to that date, already participated in the judicial survivors annuity program created by the Act of August 3, 1956 (70 Stat. 1021) [enacting this section] as amended, shall be entitled to revoke his or her earlier election to participate in that program and thereby completely withdraw from participation in the judicial survivors' annuities program created by this Act: *Provided*, That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained under this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date upon which that amount is redeposited. Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within one hundred and eighty days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to that revocation."

JUDGE TAKING OFFICE ON AUGUST 8, 1968

Section 1(b) of Pub. L. 90-466 provided that: "For the purpose of the amendment made by subsection (a) [amending subsec. (a) of this section], a judge who is in office on the date of enactment of this Act [Aug. 8, 1968] shall be deemed to have taken office on that date."

PRESERVATION OF RIGHTS OF JUDGES OF THE DISTRICT  
COURT FOR THE TERRITORY OF ALASKA

Section 12(n) of Pub. L. 85-508 provided in part that the amendment of subsec. (q) of this section by Pub. L. 85-508 shall not affect the rights under this section of any present or former judge of the District Court for the Territory of Alaska or his survivors.

APPROPRIATIONS

Section 5 of act Aug. 3, 1956, provided that: "Funds necessary to carry out the provisions of this Act [enacting this section and provisions set out as notes below, and amending sections 375, 604, and 605 of this title] may be appropriated out of any money in the Treasury not otherwise appropriated."

RESIGNED, REMOVED, AND RETIRED JUDGES

Section 6 of act Aug. 3, 1956, provided that: "A judge who resigned prior to the date of enactment of this Act [Aug. 3, 1956] and who on that date is receiving salary under section 371(a) of title 28, United States Code, or who resigned, was removed or failed of reappointment prior to the date of enactment of this Act and who on that date is receiving salary under section 373 of title 28, United States Code, shall be considered a judge within the meaning of section 376 of title 28, United States Code, as added by section 2 of this Act, and as such shall be entitled within six months after the date of enactment of this Act to make the election author-

ized by and to receive the benefits of that section. A judge who retired from regular active service under section 260 of the Judicial Code of 1911 or the Act of August 5, 1939, chapter 433, and who is living on the date of enactment of this Act shall be deemed for the purposes of this Act to have retired from regular active service under section 371(b) or 372(a), as the case may be, of title 28, United States Code."

PRIOR DEATH OF JUDGE

Section 7 of act Aug. 3, 1956, provided that: "In the case of a living widow of a judge of the United States as defined in section 451 of title 28, United States Code, who died prior to the date of enactment of this Act [Aug. 3, 1956], an annuity shall be paid as provided in section 376 of title 28, United States Code, as added by section 2 of this Act, as if such judge had died on such date and had elected to bring himself within the purview of such section 376, but had not made the deposit provided for by subsection (c) of the said section: *Provided*, (a) That such widow has not remarried; and (b) that the amount of such annuity and the reduction therein because of such deposit not having been made shall be computed on the basis of the actual length of judicial and other allowable service of such judge: *And provided further*, That notwithstanding the provisions of subsection (g) of such section 376 such annuity shall be payable even though such judge had not rendered five years of civilian service prior to his death. In the case of a judge of the United States as defined in section 451 of title 28, United States Code, who dies within 6 months after the date of enactment of this Act after having rendered at least 5 years of civilian service computed as prescribed in subsection (o) of section 376 of title 28, United States Code, as added by section 2 of this Act, but without having made an election as provided in such section 376 to bring himself within the purview of that section, an annuity shall be paid to his widow and surviving dependent children as provided in such section 376 as if such judge had elected on the day of his death to bring himself within the purview of such section 376 but had not made the deposit provided for by subsection (c) of the said section. An annuity shall be payable under this section computed on the basis of the actual length of judicial and other allowable service of the judge and subject to the reduction required by subsection (c) of such section 376 even though no deposit has been made, as required by subsection (g) of such section 376, with respect to any of such service."

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 375, 377 of this title; title 5 section 8334; title 38 section 7297.

**§ 377. Retirement of bankruptcy judges and magistrates**

(a) **RETIREMENT BASED ON YEARS OF SERVICE.**—A bankruptcy judge or magistrate to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate leaves office.

(b) **RETIREMENT UPON FAILURE OF REAPPOINTMENT.**—A bankruptcy judge or magistrate to whom this section applies, who is not reappointed following the expiration of the term of



office of such judge or magistrate, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such bankruptcy judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

(1) such judge or magistrate has served at least 1 full term as a bankruptcy judge or magistrate, and

(2) not earlier than 9 months before the date on which the term of office of such judge or magistrate expires, and not later than 6 months before such date, such judge or magistrate notified the appointing authority in writing that such judge or magistrate was willing to accept reappointment to the position in which such judge or magistrate was serving.

For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate, such notice shall be given to the chief judge of the district court in which the magistrate is serving.

(c) SERVICE OF AT LEAST 8 YEARS.—A bankruptcy judge or magistrate to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by  $\frac{1}{2}$  of 1 percent for each full month such bankruptcy judge or magistrate was under the age of 65 at the time the judge or magistrate left office, except that such reduction shall not exceed 20 percent.

(d) RETIREMENT FOR DISABILITY.—A bankruptcy judge or magistrate to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

(e) COST-OF-LIVING ADJUSTMENTS.—A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except

that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive<sup>1</sup>

(1) any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate or otherwise;

(2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

(3) retired pay under section 7447 of the Internal Revenue Code of 1986; or

(4) retired pay under section 7296 of title 38.

(g) CALCULATION OF SERVICE.—(1) For purposes of calculating an annuity under this section—

(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

(B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(B) In the case of an individual who is a magistrate to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(h) COVERED POSITIONS AND SERVICE.—This section applies to—

(1) any bankruptcy judge appointed under—

(A) section 152 of this title;

(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682); or

(C) section 404 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549); and

<sup>1</sup> So in original. Probably should be "receive—".

(2) any United States magistrate appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.

(i) **PAYMENTS PURSUANT TO COURT ORDER.**—(1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

(3) As used in this subsection, the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

(j) **DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.**—

(1) **DEDUCTIONS.**—Beginning with the next pay period after the Director of the Administrative Office of the United States Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate has elected an annuity under this section, the Director shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate shall terminate upon the retirement of the bankruptcy judge or magistrate or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

(2) **CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.**—Each bankruptcy judge or magistrate who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate is entitled under this section (and section 376).

(k) **DEPOSITS FOR PRIOR SERVICE.**—Each bankruptcy judge or magistrate who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(l) **INDIVIDUAL RETIREMENT RECORDS.**—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate from whom such amounts are received, for credit to the Judicial Officers' Retirement Fund.

(m) **ANNUITIES AFFECTED IN CERTAIN CASES.**—

(1) **PRACTICING LAW AFTER RETIREMENT.**—

(A) **FORFEITURE OF ANNUITY.**—Subject to subparagraph (B), any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

(B) **FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.**—(i) If a bankruptcy judge or magistrate makes an election to practice law after retirement under this section—

(I) subparagraph (A) shall not apply to such bankruptcy judge or magistrate beginning on the date such election takes effect, and

(II) the annuity payable under this section to such bankruptcy judge or magistrate, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate is entitled on the day before such effective date.

(ii) An election under clause (i)—

(I) may be made by a bankruptcy judge or magistrate eligible for retirement under this section, and

(II) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

(iii) Any election under this subparagraph shall take effect on the first day of the first month following the month in which the election is made.

(2) **RECALL NOT PERMITTED.**—Any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall not be eligible for recall under section 155(b), 375, or 636(h) of this title.

(3) **ACCEPTING OTHER EMPLOYMENT.**—Any bankruptcy judge or magistrate who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a bankruptcy judge or magistrate under section 155(b), 375, or 636(h) of this title) shall forfeit all rights to

an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term “compensation” includes retired pay or salary received in retired status.

(n) LUMP-SUM PAYMENTS.—

(1) ELIGIBILITY.—(A) Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate and—

(i) who leaves office and is not reappointed as a bankruptcy judge or magistrate for at least 31 consecutive days;

(ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;

(iii) is not serving as a bankruptcy judge or magistrate at the time of filing of the application; and

(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate.

(B) Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the bankruptcy judge or magistrate and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of this title, and in accordance with the last two sentences of that subsection. For purposes of the preceding sentence, the term “judicial official” as used in subsection (o) of section 376 shall be deemed to mean “bankruptcy judge or magistrate”.

(C) If a bankruptcy judge or magistrate dies before receiving an annuity under this section, the lump-sum credit shall be paid.

(D) If all annuity rights under this section based on the service of a deceased bankruptcy judge or magistrate terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(E) If a bankruptcy judge or magistrate who is receiving an annuity under this section dies, annuity accrued and unpaid shall be paid.

(F) Annuity accrued and unpaid on the termination, except by death, of the annuity of a bankruptcy judge or magistrate shall be paid to that individual.

(G) Subject to paragraph (2), a bankruptcy judge or magistrate who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit, shall be entitled to be paid the difference if the bankruptcy judge or magistrate files an application with the Administrative Office of the United States Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

(2) SPOUSES AND FORMER SPOUSES.—(A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

(i) may be made only if any current spouse and any former spouse of the bankruptcy

judge or magistrate are notified of the bankruptcy judge’s or magistrate’s application; and

(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court or court approved property settlement agreement incident to such decree, if—

(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved; and

(II) payment of the lump-sum credit or other payment would extinguish entitlement of the bankruptcy judge’s or magistrate’s spouse or former spouse to any portion of an annuity under subsection (i).

(B) Notification of a spouse or former spouse under this paragraph shall be made in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(C) The Director shall prescribe regulations under which this paragraph shall be applied in any case in which the Director receives two or more orders or decrees described in subparagraph (A).

(3) DEFINITION.—For purposes of this subsection, the term “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made under this section from the salary of a bankruptcy judge or magistrate;

(B) amounts deposited under subsection (k) by a bankruptcy judge or magistrate covering earlier service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers’ Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (o);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service.

(o) JUDICIAL OFFICERS’ RETIREMENT FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the “Judicial Officers’ Retirement Fund”. The Fund is appropriated for the payment of annuities, refunds, and other payments under this section.

(2) INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers’ Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3) UNFUNDED LIABILITY.—(A) There are authorized to be appropriated to the Judicial Of-

ficers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term "unfunded liability" means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers' Retirement Fund over the sum of—

(i) the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrates; plus

(ii) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(Added Pub. L. 100-659, §2(a), Nov. 15, 1988, 102 Stat. 3910; amended Pub. L. 101-650, title III, §325(b)(3), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 102-40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239.)

#### REFERENCES IN TEXT

Section 7447 of the Internal Revenue Code, referred to in subsec. (f)(3), is classified to section 7447 of Title 26, Internal Revenue Code.

Section 34 of the Bankruptcy Act, referred to in subsec. (h)(1)(B), was classified to section 62 of former Title 11, Bankruptcy. The Bankruptcy Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

Section 404 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), referred to in subsec. (h)(1)(C), was set out as a note preceding section 151 of this title prior to repeal by Pub. L. 98-353, title I, §114, July 10, 1984, 98 Stat. 343.

#### AMENDMENTS

1991—Subsec. (f)(4). Pub. L. 102-40 substituted "section 7296 of title 38" for "section 4096 of title 38".

1990—Subsec. (f). Pub. L. 101-650, §325(b)(3)(A), substituted pars. (1) to (4) for "any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5."

Subsec. (h). Pub. L. 101-650, §325(b)(3)(B), substituted "on or after" for "in or after" in concluding provisions.

#### CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### EFFECTIVE DATE

Section 9 of Pub. L. 100-659 provided that:

"(a) IN GENERAL.—Subject to subsection (b), this Act [enacting this section and section 8440a [now 8440b] of Title 5, Government Organization and Employees, amending sections 155, 375, 376, 604, 631, and 636 of this title and sections 8334 and 8402 of Title 5, and enacting provisions set out as notes under this section and sections 1 and 376 of this title] and the amendments made by this Act shall take effect on the date of the enact-

ment of this Act [Nov. 15, 1988] and shall apply to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after the date of the enactment of this Act.

"(b) EXCEPTION FOR JUDGES AND MAGISTRATES RETIRING ON OR AFTER JULY 31, 1987.—A bankruptcy judge or magistrate who left office on or after July 31, 1987, and before the date of the enactment of this Act [Nov. 15, 1988] may elect to receive an annuity, or to participate in the Judicial Survivors' Annuity System, under the amendments made by this Act if such bankruptcy judge or magistrate, within 60 days after so leaving office, accepted office or employment with the United States Government or a State government or was eligible at the time he or she left office for an immediate annuity under title 5, United States Code. Any election under this subsection shall not be valid unless it is made within 6 months after the date of the enactment of this Act and under the same conditions as other persons who may make elections under the amendments made by this Act, except that any such person who makes an election under this subsection shall not receive a lump-sum credit under section 8342 or 8424 of title 5, United States Code, for prior service and shall not be required to make contributions for prior years of creditable service."

#### RETIREMENT ANNUITIES FOR INCUMBENT BANKRUPTCY JUDGES AND MAGISTRATES

Section 2(c) of Pub. L. 100-659 provided that:

"(1) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 377 OF TITLE 28.—A bankruptcy judge or United States magistrate [now United States magistrate judge] in active service on the effective date of this Act [see Effective Date note above] shall, subject to paragraph (2), be entitled, in lieu of the annuity otherwise provided under the amendments made by this section [enacting this section] to—

"(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

"(B) an annuity calculated under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate on or after October 1, 1979 (as specified in the election pursuant to paragraph (2)) for which deductions and deposits are made under subsections (j) and (k) of such section 377, as applicable, without regard to the minimum number of years of service as such a bankruptcy judge or magistrate, except that—

"(i) in the case of a judge or magistrate who retires with less than 8 years of service, the annuity under subsection (c) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 377 if the bankruptcy judge or magistrate is under age 65 at the time he or she leaves office, and

"(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the bankruptcy judge or magistrate which is in effect on the day before the retirement becomes effective.

"(2) FILING OF NOTICE OF ELECTION.—A bankruptcy judge or magistrate shall be entitled to an annuity under this subsection only if the judge or magistrate files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

"(3) LUMP-SUM CREDIT UNDER TITLE 5.—A bankruptcy judge or magistrate who makes an election under paragraph (2) shall be entitled to a lump-sum credit under

section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate under the applicable provisions of title 5, United States Code.

“(4) RECALL.—With respect to any bankruptcy judge or magistrate receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

“(A) the amount of compensation which such recalled judge or magistrate receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this subsection; and

“(B) such recalled judge or magistrate may serve as a reemployed annuitant to the extent permitted by subsection (e) of section 375 of such title.

Section 377(m)(3) of title 28, United States Code, as added by subsection (a) of this section, shall not apply with respect to service as a reemployed annuitant described in subparagraph (B).”

#### REPORT TO CONGRESS ON FINANCIAL OPERATION OF RETIREMENT ANNUITY PROGRAM

Section 8 of Pub. L. 100-659 provided that: “The Director of the Administrative Office of the United States Courts shall, not later than 5 years after the date of the enactment of this Act [Nov. 15, 1988], submit a report to the Congress on the financial operation of the retirement annuity program established under this Act and the amendments made by this Act [see Effective Date note above]. The report shall, in particular, include a discussion of the deductions from salary and deposits made for contributions to the annuity program and the need for continuing the deductions at the level established under the amendments made by this Act.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 375, 376, 604, 636 of this title; title 5 sections 8334, 8402, 8440b.

### CHAPTER 19—DISTRIBUTION OF REPORTS AND DIGESTS

Sec.	
411.	Supreme Court reports; printing, binding, and distribution.
412.	Sale of Supreme Court reports.
413.	Publications; distribution to courts.
414.	Transmittal of books to successors.
[415.]	Repealed.]

#### AMENDMENTS

1982—Pub. L. 97-164, title I, § 113, Apr. 2, 1982, 96 Stat. 29, struck out item 415 “Court of Claims decisions”.

1952—Act July 10, 1952, ch. 632, § 3, 66 Stat. 540, amended analysis to conform it to amendments of sections 411 to 413 of this title.

#### § 411. Supreme Court reports; printing, binding, and distribution

(a) The decisions of the Supreme Court of the United States shall be printed, bound, and distributed in the preliminary prints and bound volumes of the United States Reports as soon as practicable after rendition, to be charged to the proper appropriation for the judiciary. The number and distribution of the copies shall be under the control of the Joint Committee on Printing.

(b) Reports printed prior to June 12, 1926, shall not be furnished the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

(c) The Public Printer, or other printer designated by the Supreme Court of the United States, upon request, shall furnish to the Super-

intendent of Documents the reports required to be distributed under the provisions of this section.

(June 25, 1948, ch. 646, 62 Stat. 904; May 24, 1949, ch. 139, § 68, 63 Stat. 99; Oct. 31, 1951, ch. 655, § 41, 65 Stat. 725; July 10, 1952, ch. 632, § 4, 66 Stat. 540.)

#### HISTORICAL AND REVISION NOTES 1948 ACT

Based on title 28, U.S.C., 1940 ed., § 334 (Mar. 3, 1911, ch. 231, § 227, 36 Stat. 1154; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1419; July 1, 1922, ch. 267, § 3, 42 Stat. 816; June 12, 1926, ch. 568, 44 Stat. 736; Jan. 29, 1929, ch. 113, 45 Stat. 1143; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; July 3, 1930, ch. 863, § 1, 46 Stat. 1016; Feb. 23, 1931, ch. 276, § 30, 46 Stat. 1214; May 17, 1932, ch. 190, 47 Stat. 158; June 30, 1932, ch. 314, § 501, 47 Stat. 415; May 10, 1934, ch. 277, § 512, 48 Stat. 758; Ex. Ord. No. 6166, §§ 12, 14, June 10, 1933; June 7, 1934, ch. 426, 48 Stat. 926; May 27, 1936, ch. 463, § 1, 49 Stat. 1380; June 20, 1936, ch. 630, § 5, 49 Stat. 1549; June 25, 1936, ch. 804, 49 Stat. 1921).

Requirements for printing, binding, and issuing Supreme Court decisions “within eight months after said decisions have been rendered by the Supreme Court” and provision for distribution “within said period” were omitted. The phrase “as soon as practicable after rendition” was made the time for publishing such decisions as more flexible and practicable.

The words “the United States Court for China” were omitted inasmuch as that court is no longer functioning. The Secretary of State by an arrangement with China has relinquished the extraterritorial jurisdiction previously exercised by the United States in China. The 1944 Legislative and Judiciary Appropriation Act approved June 28, 1943, made no appropriation for the United States Court for China. Appropriations for other courts were made in title II of chapter 173 (57 Stat. 241). The last appropriation for the United States Court for China was in the act of July 2, 1942 (ch. 472, title IV, 56 Stat. 502).

The words “to the Secretary of War for the use of the proper courts and officers of the Philippine Islands, seven copies” were omitted in view of the independence of the Philippines, effective July 4, 1946.

The phrase “justice or judge of the United States” obviated repetition of names of courts. (See definitive section 451 of this title.)

Last sentence, fourth paragraph, of section 334 of title 28, U.S.C., 1940 ed., requiring that books should remain the property of the United States and should be preserved and turned over to successors in office, was omitted as covered by section 414 of this title.

A reference to the United States attorney for the District of Columbia was omitted as covered by “each United States attorney.”

Provision authorizing distribution of volumes under this section to each place where a court of appeals is held was added for purposes of uniformity. See similar provision in section 413 of this title.

The revised section substitutes the Director of the Administrative Office of the United States Courts in lieu of the Attorney General insofar as distribution of volumes to the judiciary is concerned. This change is consistent with the duties of the former under section 601 et seq. of this title.

Provision of section 334 of title 28, U.S.C., 1940 ed., as to the custody, use and delivery to successors was omitted as obsolete on advice of the Administrative Office of the United States Courts.

The limitation of 10 copies to the library of the Supreme Court and 6 copies to the marshal of the Supreme Court for use of the justices, was omitted and the provision for distribution in such number “specified by the Chief Justice of the United States” was substituted therefor.

Authority for making an appropriation to carry into effect the provisions of this section is contained in sec-